

05-1342 WATTERS V. WACHOVIA BANK, ET AL.

QUESTIONS PRESENTED

1. 12 USC § 484(a) of the National Bank Act limits visitorial powers over "national banks" except as authorized by federal law. National banks are defined and created under the National Bank Act. State-chartered nonbank operating subsidiaries of national banks are created under State corporate law. The Comptroller of the Currency, by Rule 12 CFR 7.4006, made 12 USC § 484(a) equally applicable to State-chartered nonbank "operating subsidiaries" of national banks. Is the interpretation of the Comptroller of the Currency that 12 CFR 7.4006 preempts Michigan's laws regulating mortgage lending as applied to State chartered nonbank operating subsidiaries, entitled to judicial deference under *Chevron USA, Inc v Natural Resources Defense Council*?
2. A national bank has been declared to be a national corporation in *Guthrie v Harkness*. 12 CFR 7.4006 treats a State-chartered nonbank operating subsidiary of a national bank as equivalent to a national bank and, thus, as a national corporation. The Tenth Amendment to the United States Constitution is violated to the extent a statute permits the conversion of State corporations into federal ones in contravention of the laws of the place of their creation. *Hopkins v Federal Savings & Loan Ass'n v Cleary*. Does 12 CFR 7.4006, by equating a State-chartered nonbank operating subsidiary with a national bank for purposes of federal preemption of State regulation, violate the Tenth Amendment to the United States Constitution?

Cert. Granted 6/19/06

Justice Thomas took no part in the consideration or decision of this petition.